

Service Date: January 25, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF)	UTILITY DIVISION
Ronan Telephone Company's)	
Application for Forbearance)	DOCKET NO. N99.1.4
)	ORDER NO. 6141

NOTICE OF COMMISSION ACTION AND ORDER

PLEASE TAKE NOTICE that the Montana Public Service Commission (Commission), in a scheduled work session held on January 21, 1999, denied the Objection to Forbearance Application and Motion for Reconsideration filed in this Docket on January 15, 1999, by Blackfoot Telephone Cooperative, Inc. (BTC).

On January 7, 1999, Ronan Telephone Company filed an Application for Forbearance for Jore, Inc., a customer in the RTC local exchange area that RTC claimed was considering obtaining telecommunications services from an alternative source that would be similar to the telecommunications services presently being provided by RTC. Pursuant to ARM 38.5.2715, RTC's application for forbearance from regulation with respect to Jore, Inc. was deemed granted on January 8, 1999—one day after filing it with the Commission.

Section 69-3-808, MCA, provides that the Commission "shall forbear regulation as to rates, tariffs, fares, or charges to facilitate competition and shall authorize the provision of all or any portion of regulated telecommunications services . . . to any person or entity that has acquired or is contemplating acquisition of . . . similar telecommunications service from an alternative source." Section 808 provides that the Commission's decision to grant or deny the forbearance from regulation shall be made within 15 days of the date the application is filed. Section 808 permits the Commission to deny a forbearance application only if it finds that the application is incomplete or that "the subject or similar service is not being offered to the customer by parties other than the applicant.

Blackfoot Telephone Cooperative (BTC) filed a timely objection and motion for reconsideration of RTC's automatic one-day approval on January 15, 1999. BTC argued that

RTC's application for forbearance was incomplete under the Commission's forbearance rules. Specifically, BTC stated that RTC's application did not comply with 38.5.2715(2)(d) which requires a statement by the applicant that either another provider has given the customer an oral or written competitive offer, or that the customer has requested a price quotation for similar services. BTC also argued that RTC's application must fail because neither BTC or its affiliates have the facilities in place to provide similar services, that RTC cannot "point to a price quote" from BTC or its affiliates, RTC cannot "point to an offer" from BTC or its affiliates, and that the negotiation of a reciprocal compensation agreement for the exchange of local traffic and wireless interconnection with RTC prevents BTC from offering these services. BTC's arguments is unconvincing and fails to include any allegation that it is not soliciting Jore, Inc. as a customer for services similar to what RTC is currently providing to Jore, Inc. or to additional services that Jore, Inc. may be considering purchasing now.

In its application, RTC stated that based on information and belief, the customer Jore, Inc. was contemplating acquisition of similar telecommunications services from an alternative source—BTC and/or its affiliate, Montana Wireless, Inc. RTC has provided additional information subsequent to its initial filing which is strongly indicative that BTC has offered to provide similar services. This information, along with the fact that there has been no representation made or affidavit filed from BTC that it is not going to offer to provide competitive services, supports a finding that RTC has now complied with § 69-3-808, MCA, and ARM 38.5.2715.

BTC alleges that RTC is attempting to prohibit competitive infrastructure deployment by pricing its services below cost before any competitor has an opportunity to consider the construction of facilities—action that is blatantly anti-competitive. BTC has other more appropriate means to bring such allegations before the Commission, such as the filing of a formal complaint with the Commission. A forbearance application does not allow for such considerations within the 15 days permitted by statute for a Commission decision to grant or deny forbearance.

THEREFORE, based on the foregoing, IT IS ORDERED that Blackfoot Telephone Cooperative's Objection to Forbearance Application and Motion for Reconsideration is denied.

Pursuant to ARM 38.5.2716, within 10 days after reaching a final contract or agreement,

RTC shall file with the Commission a copy of the final contract or agreement and the charges and conditions of service. RTC must also file a status report if the agreement or contract is not finalized with the customer within 60 days after granting of the forbearance application pursuant to ARM 38.5.2716(3), and additional status reports every 60 days thereafter if any change occurs.

DONE AND DATED this 25th day of January, 1999.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.